

Brian W. Albright
City Attorney
balbright@cityhs.net

J. Trent Daniels
Deputy City Attorney
tdaniels@cityhs.net

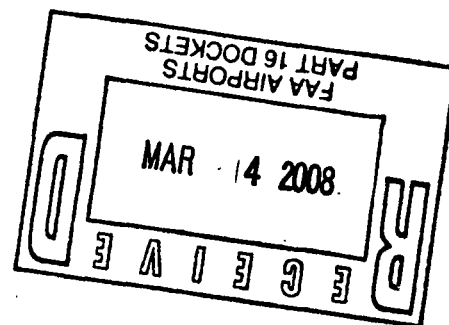


City of Hot Springs

626 Malvern Avenue
Hot Springs National Park,
Arkansas 71901
(501) 623-4023 Telephone
(501) 624-7486 Facsimile

February 12, 2008

Office of the Chief Counsel
US Department of Transportation
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591



Re: Airborne Flying Service, Inc. v. The City of Hot Springs, Arkansas
FAA Docket No. 16-07-06

Dear Sir:

Enclosed please find an original and two (2) copies of the Respondent's Reply to Complainant's Appeal of the Directors Determination filed herein. I have enclosed a self-addressed stamped envelope for return of file-marked copies.

Should you have any questions, concerns, or comments, please do not hesitate to call. Thank you for your considerations of this matter.

Sincerely yours,

Brian W. Albright

BWA: ln
Enclosures: as noted
Cc: Connie Meskimen
Mayor Mike Bush
Kent Myers
George Downie

DEPT OF TRANSPORTATION
DOCKETS
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2/12/08

**U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D.C.**

In the Matter of:

AIRBORNE FLYING SERVICES, INC.
Complainant

**FAA DOCKET
FAA CASE No. 16-07-06**

VS.

THE CITY OF HOT SPRINGS, ARKANSAS
Respondent

**RESPONDENT'S REPLY TO COMPLAINANT'S APPEAL OF
THE DIRECTORS DETERMINATION**

Pursuant to 14 C.F.R. § 16.33 (c), comes the Respondent, the City of Hot Springs, Arkansas, by and through its City Attorney, Brian W. Albright, and for its reply to Complainant's Appeal of the Director's Determination, dated December 18, 2007, denies that Complainant is entitled to the relief requested. Respondent, respectfully, requests that the Director's Determination in this matter be upheld.

Complainant has alleged in its appeal that Respondent is in violation of its Federal obligations under grant assurance 22 (d) and 49 U.S.C. 47107 (a) (6). Respondent renews its assertion that the self-fueling restrictions are reasonable do not constitute a denial of an operator's right to self-fuel. Complainant's primary argument in its appeal focuses upon an alleged attempt to establish a fuel monopoly at the Respondent's facility. This allegation, while not relevant according to *BMI Salvage Corp. v. Miami-Dade County*, FAA Docket No. 16-05-16, (July 25, 2006), is also not correct. Respondent has provided practical alternative self-fueling suggestion to Complainant. Nevertheless, motive or ill will does not amount to non-compliance (See Directors Determination (DD)).


in *BMT*). Even if the Respondent was attempting to form a fuel monopoly for financial gain, this would not amount to non-compliance. In any event, the Respondent is not attempting to establish a fuel monopoly, but rather is requiring Complainant, as well as all other tenants, to adhere to all relevant safety and environmental regulations.

In the Director's Determination of December 18, 2007, four (4) very similar self-fueling precedents are cited. All four of these decisions are now final and authoritative precedent, yet Complainant asserts that this DD misinterprets *Monaco Coach Corporation v. City of Evergreen*, FAA Docket No. 16-03-17. In *Monaco* the city denied the complainant's fueling request on environmental and safety reasons. The complainant asserted that the city wanted a monopoly on fuel. The DD on *Monaco* ultimately states that the complainant fails to show how the city's self-fueling requirement is unreasonable burdensome. The determination in *Monaco* and the circumstances here are virtually the same yet, Complainant asserts that this DD is incorrect. Complainant has failed to establish any substantive reason for this allegation. Complainant has also failed, again, to show any unreasonable or unduly burdensome aspect in Respondent's self-fueling requirements.

The Director determined that the City of Hot Springs has and does impose reasonable requirements on self-fueling. The Director also determined that Airborne showed no sufficient evidence that the City of Hot Springs violated the Federal obligations imposed in regard to self-fueling. Denying Airborne's preferred method of self-fueling is not an unreasonable denial of access. The City of Hot Springs proposed a reasonable alternative to Airborne, but it was not Airborne's preference, consequently they brought this action and this appeal. Not getting one's preferred method is not a

denial of the self-fueling right. Therefore, the City of Hot Springs requests that the Director's Determination be upheld and Respondent take nothing herein.

Respectfully submitted,



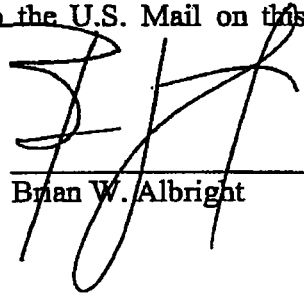
Brian W. Albright
City Attorney
626 Malvern Ave.
Hot Springs, AR 71901
(501) 623-4023 Phone
(501) 624-7486 FAX
balbright@cityhs.net

AND

J. Trent Daniels
Deputy City Attorney
626 Malvern Ave.
Hot Springs, AR 71901
(501) 623-4023 Phone
(501) 624-7486 FAX
tdaniels@cityhs.net

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing has been served upon Mr. Connie M. Meskimen, Attorney at Law, 105 Kahiki Point, Hot Springs, Arkansas, 71913, by depositing same in the U.S. Mail on this 21 day of February, 2008.



Brian W. Albright